

CAUSE NO. **16-08-79946-D**

WAYNE POZZI AND KELLY POZZI,

Plaintiffs

v.

STATE AUTOMOBILE MUTUAL  
INSURANCE COMPANY,

Defendants

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IN THE DISTRICT COURT

\_\_\_\_ JUDICIAL DISTRICT

VICTORIA COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE COURT:

COME NOW, Wayne Pozzi and Kelly Pozzi, ("Plaintiffs") and file this Original Petition, complaining of STATE AUTOMOBILE MUTUAL INSURANCE COMPANY ("Defendant" herein) and for causes of action would respectfully show this Court as follows:

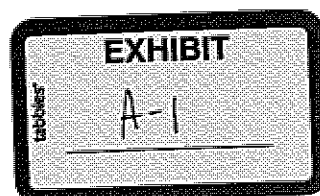
**I.****DISCOVERY LEVEL**

1. Plaintiffs intend to conduct discovery pursuant to a "Level Three" discovery control plan under Texas Civil Procedure Rule 190.3.

**II.****PARTIES**

2. Plaintiffs Wayne Pozzi and Kelly Pozzi are individuals residing at 1163 Westpark Ave. in Victoria, Texas.

3. Defendant State Automobile Mutual Insurance is a foreign corporation organized under the laws of the State of Ohio and doing business in Texas. Defendant's Registered Agent for service of process in the state of Texas is Corporation Service Company, which may be served at 211 East 7th Street Suite 620 Austin, TX 78701 -3218.



**III.**  
**JURISDICTION AND VENUE**

4. The Court has jurisdiction over this matter because the amount in controversy is within its jurisdictional limits. Venue is proper in this county pursuant to Texas Civil Practices & Remedies Code § 15.002(a) because Victoria County is where all or a substantial part of the events or omissions giving rise to the claim occurred.

**IV.**  
**BACKGROUND & CAUSE OF ACTION**

5. On April 11, 2015, Plaintiffs entered into a contract of insurance with the Defendant. Plaintiffs timely paid Defendant the premiums required to issue the policies.

6. State Automobile Mutual Insurance Company issued a commercial property coverage policy to Plaintiffs, policy number PBP 2659501, (the "Policy") effective from April 11, 2015 to April 11, 2016.

7. Among other things, the policy requires Defendant to pay for damage to the Plaintiff's covered property. On February 16, 2016, the Plaintiff's covered property caught fire and was totally destroyed. The damage was fully covered under the policy.

8. Defendant had a contractual duty to pay Plaintiffs for several losses under the policy. Defendant was promptly notified of the loss. Defendant has failed to make any payment to Plaintiffs and is in breach of its insurance contract with Plaintiffs.

9. As a result of the Defendant's breach, Plaintiffs have incurred legal fees and expenses for which they sue.

10. The actual damages Plaintiffs are owed is: \$1,081,600 for the building + 4% inflation guard for the policy, less the \$2,500 deductible. Additionally, Plaintiffs are entitled to be paid \$10,000 for debris removal, \$1,000 for fire department service charge, \$10,000 for pollution clean-up and removal + \$1,000 for outdoor property.

11. Under the policy conditions, the Defendant was to provide notice of their intentions within: “(1) 15 business days after the Defendant received the signed, sworn proof of loss and all information requested.” Plaintiffs provided the required sworn proof of loss and, when requested, submitted to examinations under oath. The examinations under oath were completed on June 2, 2016. Plaintiffs have received no further requests for information since that time to which they have not responded. All information reasonably requested has been provided. Plaintiffs have requested that Defendant pay their claims or provide an explanation, based in the policy or the law, as to why Defendant refuses to pay their claims. Defendant’s lack of a response is a violation of the insurance code and a breach of the policy provisions.

12. All conditions precedent to Defendant’s liability on the policy have been performed, and have occurred.

13. The Defendant has violated Tex. Ins. Code § 541.060 by, among other things: (1) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which its liability has become reasonably clear; (2) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer’s denial of a claim or offer of a compromise settlement of a claim; (3) failing within a reasonable time to: affirm or deny coverage of a claim to a policyholder, or submit a reservation of rights to a policyholder; and (4) refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

14. Because the Defendant violated Tex. Ins. Code § 541.060 knowingly, the Plaintiffs are entitled to additional damages in an amount not to exceed three times the amount of actual damages pursuant to Texas Insurance Code section 541.152.

15. Pursuant to TEX. CIV. PRAC. & REM.CODE§ 38.001 et. seq., the Plaintiffs are entitled to recover their reasonable attorneys’ fees. Additionally, because the Defendant’s

conduct violates the provisions of Tex. Ins. Code § 541.060, Plaintiffs are entitled to recover reasonable and necessary attorneys fees.

**PRAYER FOR RELIEF**

Plaintiffs pray that Defendants be cited to appear and answer, and that on final trial, Plaintiffs have the following:

- a) Actual damages for the amounts Plaintiffs are entitled to recover under the policy of insurance;
- b) Treble damages as provided under Tex. Ins. Code § 541.060;
- c) Prejudgment and post-judgment interest as provided by law;
- d) Attorney's fees;
- e) Costs of the suit; and
- f) Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

By: /s/ Bill Russell

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